

Notice of Allowability

Application No.

09/975,006

Examiner

William P. Watkins III

Applicant(s)

ASCHENBECK ET AL.

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 28 December 2006.
2. ☒ The allowed claim(s) is/are 8 and 9.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

The application has been amended as follows:

1. The claim identifier of claims 53 and 60 in the amendment filed 28 December 2007 has been changed from the identifier "Currently Canceled" to the identifier "Canceled" in order to be in compliance with current claim identifier rules. This is a formal matter that does not effect the cancellation of claims 53 and 60 by the amendment or the scope or substance of the allowed claims.

2. Due to the cancellation of the only claims under examination that were not indicated as being allowable by the amendment filed 28 December 2007, this application is in condition for allowance except for the presence of claims 1-7, 11-52, 54, 56 and 57 directed to inventions and species non-elected without traverse (there is no pending or allowed generic claim). Accordingly, claims 1-7, 11-52, 54, 56 been cancelled. The examiner notes that the original election was made with traverse in the paper filed 16 July 2003, but that applicant was required in section 1 of the detailed portion of the office

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action mailed 16 March 2004 to either petition the requirement (which was made final in section 1 of the detailed portion of the office action mailed 16 October 2003), or cancel the non-elected claims in the next paper. As applicant has not taken appropriate action or canceled the non-elected claims, the election is treated as being without traverse (MPEP 821.01). The application being otherwise in condition for allowance the non-elected claims have been canceled.

3. The following is an examiner's statement of reasons for allowance: the limitation of the entire top portion of the asphalt layer passing the noted test while the bottom portion does not pass the test in combination with the other limitations of independent claim 8 define over the cited art. Claims 8 and 9 were previously indicated as being allowable due to the withdrawal of previous rejections for the reasons noted in sections 1 and 2 of the detailed portion of the office action mailed 30 November 2005, section 2 of the detailed portion of the office action mailed 24 June 2005, and sections 2 and 3 of the detailed portion of the office action mailed 16 March 2004.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to

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avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. The drawings filed 10 October 2001 have been approved by the examiner.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WW/ww
January 26, 2007



**WILLIAM P. WATKINS III
PRIMARY EXAMINER**